

MAINE STATE LEGISLATURE

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AUGUSTA, MAINE 04333

April 7, 1976

Honorable Anne Boudreau
House of Representatives
State House
Augusta, Maine

Dear Representative Boudreau:

Your inquiry relating to the potential conflict of interest or impropriety of a person seeking election to the Legislature while simultaneously holding the office of town clerk has been called to my attention.

In my opinion there is a distinct conflict of interest where a candidate for public office serves as an election official in any capacity, other than that which requires the performance of purely ministerial duties, which affords an opportunity for the exertion of influence on the result of said election.

Although a town clerk is not designated an "election official" by statute, (see 21 M.R.S.A. § 1(11)) he is the supervisor of said officials and has powers of appointment of same, including the power of self-appointment.

"In a city, the election, term of office, compensation and partial duties of wardens and ward clerks are determined by the city charter. Additional duties are prescribed by this Title. In a town, unless otherwise determined by charter, the clerk of the municipality shall be the supervisor of all elections, shall, with approval of the municipal officers, appoint a warden and may appoint one or more deputy wardens to assist in the duties on election day. The clerk may designate himself or herself as warden or deputy warden but neither the warden nor any deputy warden shall be an officer of a municipal committee of a political party. Deputy wardens shall perform

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the duties of the warden when necessary and shall not be utilized to replace election clerks prescribed by this Title. The warden and deputy wardens shall be registered voters of the municipality. The clerk may appoint special deputies to help perform his duties on election day. The clerk, warden and deputies shall be paid a reasonable compensation as determined by the municipal officers." (Emphasis supplied) 21 M.R.S.A. § 531.

The Legislature has specifically declared that certain persons may not be eligible to serve as election officials, and the category of ineligible includes candidates and certain relatives: the terms of 21 M.R.S.A. § 533 read in part as follows:

"(3) Candidate or spouse, his mother, father, children, sister or brother. A candidate or his spouse or his mother, father, children, sister or brother. This does not apply unless the relatives mentioned are election officials in the electoral division from which the candidate seeks election."

A persuasive, if not irrebuttable argument, can be advanced that a town clerk is indeed an election official in the State of Maine, even though he is not expressly designated as such by statutory definition. His duties not only allow, but actually mandate, that he perform important functions relative to the conduct of elections, and it is insignificant whether or not he be defined by statute under the nomenclature of "election official."

It is only when a town officer or election official's duties in relation to the conduct of an election are purely ministerial in nature and unrelated to the outcome of said election, that said official may simultaneously be a candidate for public office.

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The Supreme Court of Vermont has held that a person may be a candidate in an election and not be disqualified from acting as an election officer unless expressly prohibited by statute or constitutional provision. (See State ex. rel. Ballard v. Green, 87 Vt. 515, 89 A. 743 (1914)). In the Green case, however, the Vermont Court simply held that it was neither illegal nor improper for a mayor "to preside at a city election, though he was a candidate for re-election, where, as presiding officer, he simply declared the result as handed to him by the authority appointed by the charter to make the count."

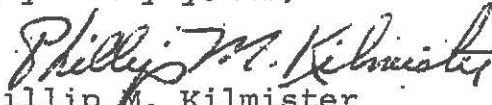
The qualifications of election officers are generally set forth by statute, and the general rule is enunciated in 25 Am. Jur. 2d (Elections) § 40 as follows:

"Although, as general rule, one who is a candidate for an office to be filled at an election is not eligible to serve as an officer of that election in any capacity that affords an opportunity for the exertion of an improper influence on the result, a candidate may be made a member of the board of canvassers to canvass and declare the result of his own election, since the duties in such a case are purely executive or ministerial. . . ."

In view of the statutory sections alluded to above relating to the duties of town clerks and the conduct of elections, and indeed other statutory sections relating to a town clerk's duties in regard to election procedures, including but not limited to, Title 21, Section 1253, which governs the supplying and receipt of absentee ballots, it cannot be concluded that the clerk's duties are purely ministerial in nature.

For the foregoing reasons, it is my belief that it would be improper for a town clerk to supervise an election in which he is also a candidate for public office.

Very truly yours,


Phillip M. Kilmister
Assistant Attorney General